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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,153	05/31/2001	Klaus David Gradischnig	P01,0183	9116
26371	7590	08/31/2005	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			LIN, KENNY S	
			ART UNIT	PAPER NUMBER
			2154	

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/857,153

Applicant(s)

GRADISCHNIG ET AL.

Examiner

Kenny Lin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1-5 are presented for examination.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/5/2005 has been entered.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 1-2 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification teaches or suggests to specially marking a message only if it is already being transmitted. Does this exclude any of the marking to all other messages?
5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. The following terms lack proper antecedence basis:

- a. Claim 5, line 2 – a transmitter protocol.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Garrabrant et al (hereinafter Garrabrant), US 5,610,595.

9. Garrabrant was cited by the applicant in IDS dated 5/31/2001.

10. As per claim 1, Garrabrant taught the invention as claimed including a method of secure data transmission which is executed on a layer basis using a transmission method having possible message overhaul, comprising the steps of:

- a. Specially marking a message only if it is already being transmitted for at least a second time by said transmitter (col.6, lines 58-64, col.9, lines 5-8; designating acceptable sequence numbers); and

- b. Ignoring said message which is marked as having been transmitted for at least a second time by a receiver if it recognizes said message as having already been received or if it interprets said message as a new message (col.8, lines 62-67, col.9, lines 1-8, 20-31).

11. As per claim 2, Garrabrant taught the invention as claimed including a method of secure data transmission wherein a transmitter protocol operates on a layer basis using a transmitter protocol having possible message overhaul, comprising the steps of:

- a. specially marking, by said transmitter protocol, a message only if it is already being transmitted for at least a second time (col.6, lines 58-64, , col.9, lines 5-8, 20-35).

12. As per claim 3, Garrabrant taught the invention as claimed including a method of secure data transmission wherein a receiver protocol operates on a layer basis using a receiver protocol having possible message overhaul, comprising the steps of:

- a. Ignoring, by said receiver protocol, a message which is marked as having been transmitted at least for a second time if it recognizes the message as having already been received or if it interprets said message as a new message (col.8, lines 62-67, col.9, lines 1-8, 27-31).

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13. As per claim 4, Garrabrant taught the invention as claimed including a method of secure data transmission wherein a receiver protocol operates on a layer basis using a receiver protocol having possible message overhaul, comprising the steps of:

- a. Ignoring, by said receiver protocol, a message if it recognizes said message as having already been received or if, although it interprets said message as a new message, said message is situated outside of a prescribed window (col.8, lines 62-67, col.9, lines 1-8, 21-31).

14. As per claim 5, Garrabrant taught the invention as claimed including a transmitter for secure data transmission with a transmitter protocol operating on a layer basis using a transmitter protocol having possible message overhaul, comprising: a means for specially marking a message only if it is already being transmitted for at least a second time (col.6, lines 58-64, col.9, lines 5-8, 20-35).

15.

Response to Arguments

16. Applicant's arguments filed 8/5/2005 have been fully considered but they are not persuasive.

17. In the remark, applicant argued that (1) Garrabrant marks each message transmitted with a sequence number field which is in contrast to the invention since the claimed invention marks a message only if it is the second time it is being transmitted. There is no teaching or suggestion in

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Garrabrant that the initial message is not marked upon the first transmission but is marked upon a second or subsequent transmission as disclosed and claimed in the present application.

18. Examiner traverse the argument:

As to point (1), Although Garrabrant taught to use sequence number field in all the packets, Garrabrant taught to specially mark only the repeated message (col.8, lines 62-67, col.9, lines 1-8, 20-31; packets which are to be retransmitted are specially marked with a designated set of acceptable sequence numbers). Garrabrant's teaching clearly reads on the claimed language since Garrabrant teach to mark all the packets using sequence number and further specially mark packets which are to be retransmitted with a designated set of acceptable sequence numbers.

Especially since the claim languages do not clearly define the term "specially marking".

Applicant's argument that **the first transmitted message is not marked** is not necessary an inherently feature since the claim language defined that **only the retransmitted packets are specially marked**. Rather, it may have been inherent that the first transmitted message is not specially marked. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the first transmitted message is not marked) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Conclusion

19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Rondeau, US 5,734,643.

20. A shortened statutory period for reply to this Office action is set to expire THREE MONTHS from the mailing date of this action.


21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenny Lin whose telephone number is (571) 272-3968. The examiner can normally be reached on 8 AM to 5 PM Tue.-Fri. and every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ML

8/30/05

 JOHN FOLLANSBEE
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